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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

(I) CWP-22727-2016 (O&M)  
Date of decision:24.07.2023

JAGGA SINGH

...Petitioner

Versus

STATE OF PUNJAB & ORS

...Respondents

(II) CWP-22729-2016 (O&M)

HARDEV SINGH AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB & ORS

...Respondents

(III) CWP-22779-2016 (O&M)

KULWANT SINGH

...Petitioner

Versus

STATE OF PUNJAB & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Nakul Sharma, Advocate  
for the petitioner(s).

Mr. Maninder Singh, DAG, Punjab

Mr. Suresh Kumar Aneja, Advocate  
for respondent No.4-Gram Panchayat

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**SURESHWAR THAKUR, J. (ORAL)****CM-1723-CWP-2017, CM-1724-CWP-2017**

1. Allowed as prayed for.

**CM-1702-CWP-2017, CM-1703-CWP-2017**

2. Allowed as prayed for.

**CM-1783-CWP-2017, CM-1784-CWP-2017**

3. Allowed as prayed for.

**MAIN CASE(S)**

1. All the writ petitions arise from a common order, as made by the learned Collector concerned, on a petition cast under Section 7 of the The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act of 1961”), by Gram Panchayat Chak Mohammadwala, Tehsil Jalalabad, Districct Fazilka.

2. The verdict(s) of eviction, as made on the apposite eviction petitions become appended with CWP-22727-2016, CWP-22729-2016, and CWP-22779-2016, and, are respectively assigned Annexure P-1 in CWP-22727-2016, Annexure P-4 in CWP-22729-2016, and Annexure P-1 in CWP-22779-2016. The verdicts on the consequent thereto statutory appeals as became raised thereagainst by the unsuccessful judgment debtors-respondents, in the said eviction petitions, are embodied in Annexure P-3 in CWP-22727-2016, Annexure P-6 in CWP-22729-2016, and Annexure P-3 in CWP-22779-2016. Though a verdict made on the said appeals, the earlier made verdict of eviction thus, on the petitions (supra), became affirmed by the Competent Appellate Authority.

3. Therefore, the petitioners became aggrieved from the concurrently made verdicts of eviction against them by the Statutory Authorities below,

thereby they are led to institute thereagainst the instant writ petition(s) before this Court.

4. The learned counsel for the petitioner(s), has vehemently argued before this Court, that though initially the jurisdiction in respect of case(s) (supra), was vested in the DDPO Ferozepur, but subsequently on transfer of the writ lands from the jurisdiction of District Ferozepur, to BDPO Ferozepur, thus through an order made on 15.11.2011, order whereof becomes extracted hereinafter, thus the learned Collector concerned, transferred the lis to the Court of Collector of the District Fazilka hence for further consideration.

*“Counsel for the appellant came present. Due to forming of new District Fazilka, new DDPO has already been constituted there. Thus, this case now comes under its jurisdiction. Therefore, this case is transferred to Collector (DDPO) Fazilka for further proceedings. Parties are directed to appear before the DDPO Fazilka on 22.12.2011.*

*Sd/- Collector”*

5. A reading of the above order reveals, that the making of the said order became pronounced in the presence of the counsel for the appellant, therefore, it was but incumbent upon the counsel for the appellant, to on 22.12.2011, thus make his appearance before Transferee Court, who obviously then assumed jurisdiction in respect of the lis. However, despite the above intimation being made, thus to the counsel for the respondent-respondent debtor, yet he did not appear on 25.11.2013, however, but the respondent appeared in person, hence on the said date, whereupon the learned Collector concerned, ordered that the case be listed on 06.12.2013, but on 06.12.2013, yet despite an intimation being available to the respondents, to cause his appearance before the Transferee Court, but again neither the respondent caused his appearance before the learned trial Collector concerned, nor his counsel then put his appearance.

Therefore, the respondent concerned, was proceeded against ex-parte, and, an

order of eviction became made against them, verdict whereof becomes comprised in Annexure P-1 in CWP-22727-2016, Annexure P-4 in CWP-22729-2016, and Annexure P-1 in CWP-22779-2016.

6. Since, there is no application existing on record whereby the said order was asked to be recalled, nor obviously when the order, as made by the learned Collector Fazilka, on 06.12.2013, whereby for non-appearance of the counsel for the judgment-debtor, and/or, his counsel, despite an intimation being available, to each of them to record their respective appearance(s), on the date fixed for the lis being taken by the learned Collector concerned, rather the respondent became proceeded against ex-parte, thus evidently became unasked to be recalled nor also when the said order became recalled. Therefore, the said order directing the respondent judgment-debtor to become proceeded against ex-parte thus, acquires conclusive and binding effect. Moreover, if in the grounds of appeal, any grouse became raised thus, devolving upon, the said order being tainted or being untenable. Nonetheless, the said ex-parte drawn proceedings against the respondents concerned, are unflawed, as, despite notice to them of the date whereons they were to appear yet none caused appearance before the Collector concerned. As such, the order (supra), thus rendered by the learned Appellate Authority concerned, does not become afflicted with any illegality, and as such, the said order is maintained, and, affirmed.

7. Though, the result of the above discussion, is that the ex-parte order of eviction, passed against the judgment debtor-respondent in the eviction petition, petitioners before this Court, hence is a valid order.

8. However, the learned counsel appearing for the petitioner(s) vehemently argued before this Court, that since in the column of ownership of the jamabandi relating to the petitions lands, there is an entry of *Jumla Mushtarkan*. Therefore, he argues that since a catena of judgments, as made by

this Court, make clear expostulations, that in respect of the above category of lands, the jurisdiction to enter into trial on a petition for eviction against the respondent-judgment debtor, and, to make a valid order thereon rather is not vested in the Collector concerned, constituted under the Act of 1961, but is vested in the empowered Officer constituted under The Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as “the Act of 1973”).

9. Though, the above made submission before this Court, does *prima-facie* have some legal worth, but since this Court for the above reasons, has affirmed the ex-parte verdict of eviction made against the petitioners by the learned Authorities below. Therefore, and, also irrespective of the above, even if the above factum, has not been either deliberated upon nor is discussed in the concurrently made orders of eviction, as passed by the Statutory Authorities below, and, who for want of deliberations thereon, and/or, for want of any decisions being made on the issue of the jurisdictional dis-empowerment of the Authorities below, constituted under the Act of 1961, to try the apposite lis, but on the premise of the petitioners’ lands being termed in the revenue records, as *Jumla Mushtarka Malkan*, whereby the Authorities constituted under the Act of 1961, may not, have any valid jurisdiction to either enter into trial of the petition(s) (supra), or to make valid orders of eviction on the relevant eviction petition(s), though thereby may make the impugned verdicts to become tainted.

10. Therefore, but when for the above purported lack of discussion, this Court may deem it fit, and, appropriate to make an order of remand, to the Collector concerned, to after hearing the petitioners before this Court, to, thereafter make a decision whether there was a complete jurisdictional disempowerment in the Collector concerned, to, in view of the above, thus, enter upon the trial in the petition (supra), and, to make a valid speaking decision

thereons. However, since any order of remand would result in causing the restoration of the lis to its original number.

11. In consequence, when on restoration of the lis, to its original number, thus would result in the date of restoration, becoming construable to be the date when the lis, as such, arises for a fresh determination being made thereon, and/or thereby the lis becoming reinvented or resurfacing afresh. Therefore, when it is brought to the notice of this Court, that thus, through an amendment made in the Act of 1961, through the Punjab Act No.19 of 2022, whereby *Jumla Mushtarka* lands, now become included in the definition of *Shamlat Deh Lands*. Resultantly, thereby it appears that though on transition of jurisdiction earlier conferred in the Authorities constituted under the Act of 1973, to the Authorities constituted under the Act of 1961, thereby the latter Authority may have valid jurisdiction to try the lis on remand. However, the Court again refrains from making an order of remand to the Statutory Authorities concerned, as constituted under the Act of 1961. The reason being that once this Court has come to a firm conclusion, that the order whereby, the respondent(s) judgment debtors (petitioners herein), hence became proceeded against ex-parte, thus has acquired binding, and, conclusive effect. Consequently, if the above inference has been drawn by this Court, and, yet this Court proceeds to make an order of remand to the Authorities below, whereupon, the lis would become restored to its original number, thus when from the date of its restoration, thereby makes the lis to become reinvented afresh. Resultantly, when jurisdiction in respect of *Jumla Mushtarka* lands concerned, as became vested earlier in the Authorities constituted under the Act of 1973, has now become transferred to the Authorities constituted under the Act of 1961, thereby there would be occur on *inter-se* contradiction(s) with the

inference (supra) drawn by this Court. Therefore, order of remand of the lis is deemed not fit to be thus made.

12. Even otherwise if the present writ petition is a continuation of the statutory proceedings as became launched before the Authority(ies), under the Act of 1961, thus thereby when in face of amendment (supra), this Court too has jurisdiction to entertain a writ petition directed against the verdict drawn by the Authority(ies) constituted under the Act of 1961. Therefore, with this Court affirming the *ex-parte* verdict of eviction, as passed by the Authority(ies) under the Act of 1961. Resultantly when the apposite jurisdictional competence (supra), of the said Authorities, to even in respect of *Jumla Mushtarka* lands, thus make a valid trial of the apposite petition, rather now becomes invested in them. Therefore, in the face of the above, and, in the larger interest of justice, this Court deems it fit to thereby conclude, that even on making of a remand of the lis, to the Remandee Court, in whom now the apposite jurisdiction is vested, thus would be a needless exercise, rather for merely testing the validity of the decision but merely on the premise of no valid jurisdictional competence, vesting in the Collector concerned, under the Act of 1961. Predominantly when it would but present the Remandee Court thus with a *fait accompli*.

13. The learned counsel for the petitioner(s) further contends, that a right of ownership inheres in the petitioners over the petition lands. However, the said argument pales into insignificance, as there are recorded revenue entry(ies) of *Gair Marusi*, existing in the column of cultivation, in respect of the petitioner(s) herein. Therefore, since the said limited status of the petitioner(s) in the petition lands, when apparently is not equivalent to that of owners, thus the said limited status is amenable for becoming terminated, at any time, through an eviction order becoming passed against them. Therefore, since the counsel for the petitioner(s) also cannot argue even on merits. Moreover, with the

petitioner(s) did not, at the earliest made a challenge to the efficacy of the said entries nor when any evidence at any stage became adduced, thus to dislodge the presumption of truth attached to the said entries, thereupon such entries acquire an aura of conclusivity. Significantly also when despite an opportunity to adduce such evidence yet they waived or abandoned in availing the said opportunity, thus through their avoiding participation in the relevant proceedings.

14. Furthermore, the petitioners before this Court, could well have taken to stake title to the land, thus in terms of the provisions to Section 7 of the Act of 1961, provisions whereof stands extracted hereinafter, but yet, during the pendency of a petition cast under Section 7 of the Act of 1961, or earlier thereto before the learned Civil Court concerned, but yet they failed to do so. The lapse (supra), on the part of the petitioner(s), does now pre-empt them to argue before this Court, through their counsel, that yet they may be granted the liberty to institute a petition cast under Section 11 of the Act of 1961 before the learned Collector concerned, thus claiming title on any ground whatsoever in respect of the petition lands.

***“7. Power to put panchayat in possession of Shamilat deh-***

*(1) The collector shall, on an application made to him by a panchayat, or (a) 2[by an officer, duly authorised in this behalf by the state government by a general or special order], after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the Shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to execution of a decree for possession of land under the Punjab Tenancy Act, 1887.*

*Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under section 11 and till the question is so determined, the application shall remain pending:*

*Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh.*

*(2) An appeal against the order of the collector under sub-section(1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against. ”*

15. For the above reasons this Court does not find any reason in the above petition(s), thus the same are dismissed. The impugned orders are maintained, and, affirmed.

(SURESHWAR THAKUR)  
JUDGE

24.07.2023

Ithlesh

(KULDEEP TIWARI)  
JUDGE

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|-----------------------------|--------|
| Whether speaking/reasoned:- | Yes/No |
| Whether reportable:         | Yes/No |